

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BROTHER INTERNATIONAL CORPORATION,

Plaintiff,

- against -

NIPPON YUSEN KAISHA d/b/a NYK LINE,

Defendant.

07 Civ.

07 Civ.

COMPLAINT

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JUDGE CASTEL

Plaintiff, by its attorneys, CASEY & BARNETT, LLC, as and for its Complaint, alleges upon information and belief as follows:

1. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure. Jurisdiction is predicated upon 28 U.S.C. § 1333.
2. Plaintiff, BROTHER INTERNATIONAL CORPORATION, is a corporation with a place of business located at 100 Somerset Corporate Boulevard, Bridgewater, New Jersey and is the owner of a consignment of sewing machines that were to be shipped aboard the M/V NYK AQUARIUS, as more fully described below.
3. Defendant, NIPPON YUSEN KAISHA, d/b/a NYK LINE, is a foreign corporation with an office and place of business located at 300 Lighting Way, Secaucus, New Jersey 07094, and at all relevant times was and is doing business in this jurisdiction directly and/or through an agent, and at all times acting in the capacity of a common carrier and was the owner, charterer, manager, and/or operator of the M/V NYK AQUARIUS.
4. Plaintiff was the consignee, owner and/or assured of the consignment hereinbelow described and brings this action on its own behalf and as agent and/or trustee on behalf of and for

the interest of all parties who may be or become interested in the said consignment, as their respective interests may ultimately appear, and Plaintiff is entitled to maintain this action.

5. On or about May 7, 2005, a consignment of 1,900 cartons of Model LS2125 sewing machines, laden in container numbered CLHU 4621306, then being in good order and condition, was shipped from Zhuhai, China to Hong Kong aboard the vessel MV PANG CHING 8 for trans-shipment from Hong Kong to Los Angeles aboard the NYK AQUARIUS.

6. On or about May 8, 2005 the MV PANG CHING 8 arrived at Hong Kong, whereupon, container no. CLHUI 4621306 was received and stowed by defendant, NYK, and/or its agents at NYK's open storage yard pending loading aboard the M/V NYK AQUARIUS for transport to Los Angeles, California, pursuant to NYK bill of lading NYKS479149797.

7. On or about May 9, 2005, while still in defendant's storage yard, container no. CHHUI 4621306 sustained physical damages when other containers in the yard toppled onto the container during a rain storm. As a result of the damages, the container and the 1,900 cartons of sewing machines stored within were rendered unfit for export to Los Angeles, California.

8. On or about May 11, 2005, NYK and/or its agent's transferred the 1,900 cartons of sewing machines from damaged container no. CLHUI 4621306 into container no. NYKU 6068049.

9. On or about May 22, 2005, container no NYKU 6068049 was loaded aboard the coastal vessel M/V TA CHUNG NO. 18 and transported back to the shipper's factory in Zhuhai, China.

10. On or about May 31, 2205, a survey of the goods was conducted at the shipper's factory, and it was determined that 588 sewing machines had sustained various degrees of wetting damages, including rusting, staining and discoloration.

11. The damages to the aforementioned sewing machines did not result from any act or omission on the part of plaintiff, but to the contrary, were the result in whole or in part, of the negligence and/or fault and/or breach of contract and/or breach of bailment by the defendant.

12. By reason of the foregoing, Plaintiff has been damaged in the amount of \$27,000, no part of which has been paid, although duly demanded.

WHEREFORE, Plaintiff prays:

1. That process in due form of law may issue against Defendants citing them to appear and answer all and singular the matters aforesaid;
2. That judgment may be entered in favor of Plaintiff against Defendant for the amount of Plaintiff's damages, together with interest and costs and the disbursements of this action; and
3. That this Court grant to Plaintiff such other and further relief as may be just and proper.

Dated: New York, New York

August 6, 2007

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CASEY & BARNETT, LLC
Attorneys for Plaintiff

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